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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR 09-00417-EMC-2
)	
MOUNIR FAYEZ KARA,)	
)	San Francisco, California
Defendant.)	Wednesday
)	December 10, 2014
)	10:43 a.m.

TRANSCRIPT OF TRIAL PROCEEDINGS

APPEARANCES:

For Plaintiff: MELINDA L. HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ADAM A. REEVES
ROBERT S. LEACH
Assistant United States Attorneys

For Defendant: RAMSEY & EHRLICH, LLP
803 Hearst Avenue
Berkeley, California 94701
BY: ISMAEL J. RAMSEY, ESQ.

Also Present: CHRISTINA CARRUBBA, U.S. Probation

Reported by BELLE BALL, CSR 8785, CRR, RDR
Official Reporter, U.S. District Court

1 **WEDNESDAY, DECEMBER 10, 2014**

10:43 A.M.

2 **PROCEEDINGS**

3 **THE CLERK:** Calling Case C-09-0417, U.S.A. versus
4 Mounir Kara.

5 Counsel, please come to the podium and state your name for
6 the Record.

7 **MR. REEVES:** Adam Reeves and Robert Leach for the
8 United States.

9 **THE COURT:** All right.

10 **MR. REEVES:** Again, good morning, Your Honor.

11 **THE COURT:** Good morning.

12 **MR. LEACH:** Good morning, Your Honor.

13 **MR. RAMSEY:** Good morning, Your Honor. Ismail Ramsey
14 on behalf of Mounir Kara, also known as Michael Kara, who is
15 present and out of custody.

16 **THE COURT:** Good morning. And good morning,
17 Mr. Kara.

18 **THE DEFENDANT:** Good morning, sir.

19 **THE COURT:** Okay. We are on for sentencing in this
20 matter.

21 Let me briefly review the procedural history. On
22 April 29, 2009 a 38-count indictment was filed in this Court
23 charging a number of individuals, but including Mr. Kara, with
24 violations of 18 U.S.C. Section 371, conspiracy; 15 U.S.C.
25 Section 78j(b) and 78ff; and portions of the C.F.R., including

1 10b-5; and Section -- Title 18, Section 2, securities fraud,
2 Counts 2 through 35. And violation of 18 U.S.C. Section 1505,
3 obstruction, which is Counts 37 and 38.

4 There is a forfeiture allegation. And the Defendant was
5 named in Counts 1 through 38.

6 On July 13, 2011 the Defendant pled guilty to Counts 1 and
7 26 of the indictment. And, judgment and sentencing after
8 completion of the other trials in this case were then set for
9 today's date.

10 And I do have the plea agreement; the presentence report
11 prepared by Probation; defendant's unredacted filing,
12 including Exhibits A through H. I have now copies, also of
13 Dr. Shields', I think, latest psychological assessment and the
14 United States' sentencing memorandum.

15 **MR. REEVES:** (Nods head)

16 **THE COURT:** So, let me ask if there is anything else
17 that I might have missed.

18 **MR. RAMSEY:** I would just add, Your Honor, that we
19 also included Dr. Shields' initial psychological assessment
20 that was done on behalf of the Court, that was ordered by
21 Judge Patel before he entered the pleas, the competency to
22 enter a plea.

23 **THE COURT:** Right. Is that separate from the tabs?

24 **MR. RAMSEY:** I'm sorry; no, it's not, Your Honor.

25 **THE COURT:** All right. Any corrections that have to

1 be made still to the PSR at this point?

2 **MR. RAMSEY:** No, Your Honor. All of our corrections
3 have been resolved.

4 **THE COURT:** Okay. So, I'm familiar with the history
5 of this case, and the materials here. And I had a couple of
6 questions. And, you know, I would love to -- want to hear
7 your comments.

8 There's a lot, and everybody agrees with respect to the
9 depth and the severity of the medical issues that Mr. Kara has
10 been faced with, including emotional issues and psychological
11 conditions. And I think those are well documented. I don't
12 think there is any doubt about that. And I think everybody
13 seems to be on board that consideration should be given to a
14 5H1.3 and a 5K2.0(a)(4) (sic) departure.

15 But the one thing that gives me some -- that sort of
16 moderates that mitigating factor is although Dr. Shields says
17 that he believes the conduct in the commission of the offense
18 was related to some of these medical conditions, I frankly
19 have a hard time seeing that, given the length of time that
20 this took place, over a three-year period; the number of
21 transactions; the number of individuals; the -- the
22 carefully-planned intricate nature of hiding the transactions,
23 the sophisticated nature of it.

24 You know, this is not somebody who committed a crime on an
25 instant's notice based on some foggy state of mind or some

1 personality issue that would cause him to go into a rage or
2 something. This was one of the most prolonged, meticulous,
3 intricate law violations that I've seen.

4 So, Mr. Ramsey, maybe you can help me out. I mean, what
5 is the evidence -- other than Dr. Shields' conclusion, what is
6 the specific evidence that the conditions that were diagnosed
7 were causally related and somehow factored into the commission
8 of the three-year offense here?

9 **MR. RAMSEY:** I think there are several factual -- or
10 several facts that have been documented and that are evidence
11 of his state of mind and his reduced cognitive ability at that
12 time. There are documented evidence about his delusions that
13 were going on at the time.

14 There was police reports that were filed at the time of
15 the events, regarding reports that Mr. Kara had made, the
16 conclusions of the Vallejo police after they came and spoke
17 with him --

18 **THE COURT:** Well, I'm familiar with that and the
19 digging, and his hands were bloody, and the fence, and the
20 suspicion and the neighbors and all that.

21 What I don't see is: How does that relate to him
22 acquiring the information, deceiving his brother and then
23 giving that information to others? I don't see the
24 connection. I mean, it's almost at odds to be able to conduct
25 such an intricate plan while suffering from these delusions.

1 And I guess it is possible, people with paranoia and
2 schizophrenia can cabin their activity. There are many people
3 who work as he has maintained his company during this period.
4 People can function and still suffer from these diseases.

5 But, I'm trying to see what the causal relationship is.
6 I'm not saying you necessarily have to show a causal
7 connection under 5H1.3, but it certainly would make it a more
8 compelling --

9 **MR. RAMSEY:** No, I think that's right but I think the
10 capacity to reason and -- and his diminished capacity in
11 executive functions that Dr. Shields talked about, and that is
12 evidenced by some of these examples of things that were going
13 on and his views about his neighbor and so forth, that
14 reduction in executive functions and his ability to, you know,
15 to exercise particular judgment, that combined with the
16 effects of the narcotics I believe is what Dr. Shields is
17 saying is evidence of his diminished -- his capacity which
18 leads to -- to this -- this conduct.

19 Also, there is also the personality disorder that we did
20 not focus on as much, but that Dr. Shields also referenced
21 about the personality disorder of the pleasing personality
22 that -- that he has displayed. Those three things --

23 **THE COURT:** Let me ask you about that. Let me ask
24 you about that. Who was -- how does that work? Who was
25 Mr. Kara trying to please in committing these crimes? He

1 wasn't trying to please his brother, because he wouldn't tell
2 his brother about them.

3 **MR. RAMSEY:** Well, he has a reclusive personality,
4 which Dr. Shields has talked about. His friends are extremely
5 limited. Emile Jilwan was really the only sort of long-time
6 closest friend that he had.

7 I mean, given his condition, it's difficult for him to
8 establish friendships. And so the people that he was actually
9 providing information to sort of falls squarely within this
10 personality disorder. So, the first is Emile Jilwan. There
11 was a doctor who had helped save his life, essentially, with
12 the complications that he had from the stomach surgery.

13 And in addition to that, there was the mending of the two
14 families between Maher and Susie. And essentially this --
15 some of the tips that went to Bassam Salman -- he obviously
16 didn't know about the tips to Karim Bayyouk at the time, but
17 the tips that went to Bassam Salman were specifically to
18 please him during the process of when the Kara family was
19 being introduced to the Salman family.

20 Just as a reminder to the Court, Bassam Salman's sister at
21 the time was engaged to be married to Maher. And it was
22 during this meeting of the two families to try to introduce
23 them to one another and essentially to gain sort of acceptance
24 and closeness that the decision was made to give these tips to
25 Bassam Salman.

1 So, that's sort of squarely within this personality
2 disorder that Dr. Shields has spoken about.

3 **THE COURT:** And you think the personality disorder,
4 is that something that qualifies for consideration under
5 5H1.3? Is that a --

6 **MR. RAMSEY:** I think it does, in combination. I
7 mean, it's hard to take each of these, Your Honor, as
8 individually. I think that it's the totality of the -- of the
9 circumstances of those that -- that do.

10 And, so, I do think it qualifies under 5H1.3. And I do
11 think that there, you know, is a diminished capacity that is
12 due to -- that is due to a mental disorder. That's
13 appropriately recognized by the Court. I think it does put it
14 outside the heartland.

15 **THE COURT:** Let me see if you have some comments,
16 Mr. Reeves, about --

17 **MR. REEVES:** Yes. Thank you very much, Your Honor.

18 I think these are important questions. But I also think
19 there is direct evidence that answers them.

20 The United States Attorney's office struggled for a long
21 time with the evidence of this case in formulating our
22 sentencing recommendation. It is the product of a great deal
23 of thought and consideration.

24 I say that because one of the deep driving lurking facts
25 is, as in any fraud, if you follow the money, and you really

1 look at who got paid out of the profits from the illegal
2 trading scheme, you don't see in this case what you see in
3 most other frauds or most other insider-trading cases. There
4 is an utter absence of money being paid by Michael back to
5 Maher for the illegal tips that he's receiving.

6 And I think that is highly corroborative of Maher's
7 testimony about the emotional circumstances, the neediness of
8 Michael and the concern that Maher had to give the tips to
9 Michael for some other purpose.

10 I recall his testimony about how he offered to pay him
11 money rather than provide him inside information at the time
12 of the Biosite trade. I think that is profoundly illuminating
13 about Michael's -- to some extent, not to a legally
14 significant extent in terms of his responsibility for this
15 offense, but to an extent that is necessary for the Court to
16 evaluate in the sentencing hearing -- Michael's irrational
17 need to obtain this inside information. Okay. And he doesn't
18 pay Maher back for it. In that way, this case is different.

19 That, that phenomena of -- of getting this gift of inside
20 information, secret information, plays itself out in the way
21 Michael then distributes it to family members and other
22 friends, and doesn't seek profits back from the illegal
23 trading.

24 **THE COURT:** Except on the trading on his own account
25 that he shared with Mr. Jilwan, right?

1 **MR. REEVES:** Mr. Jilwan. And I will address that in
2 a second.

3 I think the Court is 100 percent right to be focused on
4 the extent to which trading profits are hidden or concealed.
5 That was a profoundly important fact in the sentencing of
6 Mr. Salman. And, frankly, in the guilt of Mr. Salman. I
7 think it's much less compelling when you look at the facts as
8 they relate to Mister -- Mr. Kara. And I will address that in
9 a second.

10 But if you follow the money, you look for a return of
11 profits; you don't see that. You see instead, as the Court is
12 intimately aware, based on trials, you see the passing off of
13 this almost beneficent sharing to the new family member. To
14 Bassam Salman. It's a way of ingratiating himself.

15 And you don't -- I believe the trial testimony was that
16 there was an offer by Mr. Salman to repay the money, but I
17 don't think that was fully accepted or meaningfully accepted,
18 given the magnitude of the profits, by Michael Kara. That's a
19 very interesting fact that I think directly corroborates some
20 different motive by Michael Kara, which is a motive to please
21 others.

22 It plays itself out in the way he does the same sort of
23 thing to Michael Azar, who testified in this case. A good
24 friend of the family, traded on inside information, knew that
25 it was coming from Maher, is not paying Michael back for that.

1 Again, this is Michael sprinkling gifts and inside information
2 and sort of wherewithal and very valuable information to his
3 friends.

4 What is his motive? His motive is not a financial one.
5 It is a -- I think it's corroborative of a desire to please.

6 Okay. I'm getting additional --

7 **THE COURT:** I see.

8 **MR. REEVES:** But, let me finish my point.

9 It's true for Mr. Azar, it's true for Mr. Mardini who also
10 testified, again, received this information without a pay-back
11 in any sense to Michael. Michael to a lesser extent provides
12 this information to other friend like Mr. Jilwan, with whom he
13 trades. They conduct a joint-trading enterprise, that we
14 credit the -- the evidence in the case that suggests that the
15 real reason they did it in Mr. Jilwan's name was to prevent
16 Mr. Kara's wife from learning that he's trading too much. And
17 things of that extent.

18 It was not difficult to figure out that Michael Kara was
19 actively involved using the Jilwan account, specially when we
20 are assisted by such extraordinary agents like Jeff Chisholm.
21 But, it's actually looking at the computer records to see who
22 is actually accessing the file, and conducting the trades.

23 By contrast, it was very difficult to figure out
24 Mr. Bayyouk's role in conducting the trading for Mr. Salman.
25 And to that extent, I think there is an important distinction

1 in the quality of the evidence about an intent to really
2 deceive and hide the trading. And that distinction, I think,
3 is critical in looking at Salman and Mr. Kara separately.

4 There are additional people who also received some of
5 these tips for Michael, for whom there was not money coming
6 back to Michael Kara. They include Safwan Hito, Mr. Kara's
7 uncle whose name I've now forgotten, and Dr. Habib.

8 So, there is absolutely the sense of showering friends and
9 family with information to help them.

10 **THE COURT:** Okay. What about the actual self-profit
11 part of it? If you can address that.

12 **MR. REEVES:** We don't deny it. He -- he wants to
13 make money, and did make money from this. Okay? There's no
14 question about that.

15 But when -- what -- the balance that has to be struck, in
16 our judgment, is: Is this really someone who is fully
17 empowered to make the right decision? And, he's empowered to
18 make the right decision, to follow the law, and knows that
19 it's illegal.

20 But he's not -- in the sentencing dynamic, you have to
21 weigh in the -- his mental illness as a contributing factor,
22 it seems to me, in -- in cutting against that.

23 And then, what's the punishment for a person who is not
24 fully able, as we expect, you know, people without these kind
25 of mental-health concerns, not fully able to control

1 everything that he's doing. And certainly, as to the scope of
2 what he's doing. So, that was a very important component in
3 our evaluation.

4 (Off-the-Record discussion between Counsel)

5 **MR. REEVES:** And I'm reminded by my colleague
6 Mr. Leach that while it is true that Mr. Maher Kara did not
7 profit in terms of money, he certainly does benefit by helping
8 his brother. And that was crystal clear in the testimony, and
9 he was quite candid about that as his motivation. He wanted
10 to help his brother.

11 So, I think those are key well-established facts that
12 corroborate the deeper, more difficult-to-appreciate sense to
13 which there is a nexus between the mental-health issues and
14 the facts and circumstances of this crime that raise important
15 sentencing considerations about what's the right thing to do
16 for this Defendant on these facts.

17 **THE COURT:** Let me ask you, so I understand,
18 therefore, the mental and emotional conditions, policy
19 statement, the 5H1.3, departure is a warranted one in light of
20 this because you think there is a causal relationship, and it
21 is a severe one.

22 What is your response to the diminished-capacity 5K2.13
23 argument that defense has made?

24 **MR. REEVES:** I -- I think -- I think the reality is
25 that -- can I have just a second?

1 **THE COURT:** Yeah.

2 (Off-the-Record discussion between counsel)

3 **MR. REEVES:** Thank you, Your Honor.

4 **THE COURT:** Yeah.

5 **MR. REEVES:** Look, I think the bottom line is that
6 it's clear that Mr. Kara knew the difference between right and
7 wrong. He knew absolutely that this scheme was illegal. He
8 understood it at the time. And he took some steps -- not as
9 elaborate as Mr. Salman's, but he certainly took some steps to
10 conceal. He certainly lied to the SEC when they called and
11 asked him about it.

12 This is not a person who has difficulty understanding the
13 illegality of his conduct. And he should be punished for it,
14 and he is rightly convicted for it.

15 That being said, the medical evidence raises additional
16 facts that sort of, I think, need to be weighed pursuant to
17 3553(a). That is our analysis. That the facts and
18 circumstances of this Defendant, given that mental illness
19 history, need to be considered. They need to be weighed. And
20 that they -- were they not present, a -- a guideline sentence
21 as recommended by the guidelines would be more appropriate.

22 But where they are present, they raise legitimate
23 questions about incarceration as a form of punishment for this
24 Defendant with this disease. That's where we come out.

25 **THE COURT:** All right. And I understand your

1 position with respect to the extraordinary cooperation that
2 was rendered by Mr. Kara under -- so the 5K1.1, if the other
3 departures don't get you there, certainly the 5K1.1 gets you
4 to a point where you would recommend no incarceration time.

5 **MR. REEVES:** Well, not to overly complicate this, but
6 again, if we -- if there were none of the evidence about
7 mental illness, we would look at the cooperation. The
8 cooperation deserves a 5K1.1 motion, and the government has
9 made that motion. We consider it extraordinary.

10 It's not -- he didn't risk his life. There are going to
11 be other defendants before the Court in other circumstances
12 that go even further. But under the circumstances of this
13 case, and the complexity of this case, which then takes us a
14 little bit into the mental-health issues and how they affected
15 the scope of the scheme and the motivations of the scheme, and
16 in his willingness to candidly work through those issues with
17 the government, all of that is extraordinary. And he deserves
18 full credit for that.

19 But our calculation, to be consistent with our policies,
20 is that the cooperation takes him down to -- I think it was
21 sentencing level 13?

22 **THE COURT:** Yeah, 13 is what your --

23 **MR. REEVES:** And, but then, I do consider it
24 incumbent on the government to at that point weigh separately
25 the 3553(a) sentencing considerations.

1 And that's where, you know, again, the evidence of mental
2 illness makes us question the appropriateness of a prison term
3 for this Defendant on these facts. And, it's by that analysis
4 that we get to --

5 **THE COURT:** Let me ask you this. If -- if there were
6 a five-level departure based on the emotional and mental
7 health, if I were to apply that which then brings it to a 20,
8 from a 25 to a 20, and then a further 5K1.1, I'm not sure what
9 the government's -- you recommend a 12-level departure down to
10 13, but I assume from a 25.

11 What happens if you start from a 20? Does the government
12 have a policy regarding what level of reduction?

13 **MR. REEVES:** I think he earned 12 levels, Your Honor,
14 based on his cooperation.

15 **THE COURT:** So that would get you potentially to an
16 8. If we took into account the 5H1.3 and the 5K2.0.

17 **MR. REEVES:** So you start at 25. Based on the
18 mental-health issues, you would reduce it to a 20?

19 **THE COURT:** That's what Probation's recommending,
20 five-level decrease.

21 **MR. REEVES:** We're recommending, based on his
22 cooperation, a 12-level reduction.

23 **THE COURT:** Okay. And if that were the case, we
24 wouldn't need a variance, because then it would be an
25 eight-level Zone A. I think it is --

1 **MR. REEVES:** You would be in Zone A.

2 **THE COURT:** Yeah, Zone A. Would that affect the
3 ability in terms of your recommendation of home detention, and
4 Probation's, for a 12-month period --

5 **MR. REEVES:** I would want to double-check Zone A in
6 the guidelines, but I don't know why it would, Your Honor.

7 **THE COURT:** Okay. While he is checking that, do you
8 have a view on that, Mr. Ramsey?

9 **MR. RAMSEY:** Yes, Your Honor. I mean, I do agree
10 with the Court's analysis, that that would bring us down into
11 Zone A. And quite frankly, before considering other 3553(a)
12 factors, so a variance would not be necessary.

13 I do think at that point, 12 months of home confinement
14 essentially would be an upward variance, which, that doesn't
15 seem like that would be appropriate in this case.

16 **MR. REEVES:** Well, we think home confinement is
17 appropriate. There should be punishment. There should be
18 deterrence. But the Court has to be mindful, as I know the
19 Court is mindful, about the special circumstances that are
20 associated with this Defendant.

21 So, punishment and deterrence are -- are important
22 components of the sentence. Home confinement is a form of
23 punishment that's recognized in the guidelines. And, we would
24 recommend that, Your Honor.

25 **THE COURT:** Do you have an answer? Would it be an

1 upward variance if --

2 **MR. LEACH:** It would, Your Honor. The guideline for
3 level 8 is 0-6 months. So 12 months in home confinement would
4 be an upward variance.

5 **THE COURT:** Does Probation have any further thoughts
6 about a recommendation of a five-level decrease based on the
7 emotional and mental health -- you still think that is the
8 appropriate --

9 **PROBATION OFFICER:** Yes, Your Honor. Absolutely.

10 **THE COURT:** Let me ask about restitution.

11 **MR. RAMSEY:** Your Honor?

12 **THE COURT:** Yeah.

13 **MR. RAMSEY:** We had discussed this earlier, and there
14 are certain issues that have come up. I don't know if -- we
15 were going to recommend jointly, and because there are certain
16 issues that have come up with Citadel, who is the victim who
17 is asking for restitution --

18 **THE COURT:** Yeah.

19 **MR. RAMSEY:** -- and they're attempting to recover
20 some funds from the forfeiture, not to belabor the Court with
21 details. The Court will rely on Mr. Reeves and Mr. Leach to
22 relay --

23 **THE COURT:** Okay.

24 **MR. RAMSEY:** -- more information. But we were going
25 to jointly request that issues of forfeiture and restitution,

1 if we could continue that part of the hearing to allow some
2 resolution of potential forfeiture issues, provided the
3 government maintains certain statutory rights, which I'll
4 allow Mr. Leach or Mr. Reeves to talk about.

5 **THE COURT:** All right.

6 **MR. REEVES:** Thank you, Your Honor.

7 In our memo, in our sentencing submission, the United
8 States recommended restitution in the amount of \$738,539.42 to
9 the one identified victim of this insider-trading scheme.

10 **THE COURT:** Right.

11 **MR. REEVES:** Citadel, LLP. And we are in agreement
12 with Probation about that amount.

13 And when you work through the amount of money that had
14 been seized at the filing of the indictment, and add to that
15 the restitution amount, the remainder to ensure that Mr. Kara
16 does not profit from his illegal proceeds that should be
17 forfeited here is \$891,291.09.

18 After we made that recommendation in our sentencing memo,
19 counsel for Mr. Kara raised the possibility of using some of
20 the forfeited money, the \$1.8 million that had been seized by
21 the government, to pay the restitution amount. And there is a
22 process within DOJ that by which we can recommend that that
23 happened. And, if approved, it may then be restored to the
24 U.S. Attorney's office so that we could pay the restitution,
25 make victims whole, and at least deal with that part of what

1 needs to be done in this case.

2 If -- that, A, takes some time. B, it's new and we
3 haven't had a chance to fully work through the details of
4 that. But, assuming all that can fall into place, which we
5 are happy to pursue, that would require that the forfeiture
6 amount be increased as to Mr. Kara by the amount that would
7 otherwise have been paid out as restitution. To ensure that
8 all of his illegal profits as we understand them are accounted
9 for, and that he's not in a position to have profited from
10 this crime.

11 And the resulting amount if all that were to happen would
12 be -- in forfeiture would be \$1,629,830.50.

13 So there are enough steps that are associated with that,
14 that Mr. Ramsey and I had discussed the possibility of
15 conducting all of the sentencing hearing that relates to
16 everything other than forfeiture and restitution today. And
17 then, working through some of these issues and finalizing the
18 judgment at a later date.

19 **THE COURT:** Okay.

20 **MR. RAMSEY:** And obviously there's -- you know, I
21 understand the government's position. I just was trying to
22 deal with this from a procedure standpoint rather than a
23 substantive standpoint.

24 **THE COURT:** Right.

25 **MR. RAMSEY:** And I have this morning spoke with Robb

1 Adkins from Winston and Strawn who represents Citadel. And he
2 indicated that their desire was to have the restitution
3 hearing, if possible, postponed so that they could still work
4 through the forfeiture issue.

5 So, I know the government had expressed concern that they
6 didn't want to waive or forego any opportunities to argue for
7 additional forfeiture on top of whatever's been seized. We
8 have no objection to that.

9 There's a specific section that the government references
10 within the statute, but we think at this point, just
11 procedurally, it would make sense to put this off. And then
12 we can make later substantive arguments which have been
13 initially raised in our briefs about forfeiture restitution.

14 **THE COURT:** So, procedurally, I can proceed on the
15 sentencing portion and continue the forfeiture and restitution
16 until --

17 **MR. RAMSEY:** Yes, Your Honor. And I know the
18 government would like to explicitly put on the Record that we
19 did not, you know, object, or we will not object, and that
20 there is no waiver for these rights under --

21 **MR. LEACH:** Rule 32, Your Honor, requires that you
22 orally announce the forfeiture and put the Defendant on notice
23 that there is going to be some element of forfeiture.

24 And so long as everybody's clear, and it sounds from
25 Mr. Ramsey like we are, the forfeiture proceeding later, we

1 don't see a procedural hurdle to doing it that way.

2 **MR. RAMSEY:** Right. We absolutely will waive that,
3 pending the additional forfeiture/restitution hearing.

4 **THE COURT:** Do you have a date in mind as to when you
5 think we should reconvene on the forfeiture?

6 **MR. RAMSEY:** Some of this depends on how long the
7 government think it will take to fully consider the
8 restoration hearing.

9 (Off-the-Record discussion between counsel)

10 **MR. REEVES:** I think, approximately 30 days.

11 **THE COURT:** So, why don't we pick a date now, Betty,
12 in January.

13 **THE CLERK:** January 14 at 2:30.

14 **THE COURT:** All right. So, I will make clear that
15 there is going to be a further forfeiture proceeding, and a
16 likelihood of some forfeiture judgment in this matter,
17 pursuant to a hearing.

18 **MR. REEVES:** Respectfully, I think that what is
19 important is that the Court make clear that it intends to
20 order forfeitures today, but we will wait until January 14 to
21 resolve the amount of that forfeiture order.

22 **THE COURT:** All right. Well, then, that's what I
23 will say. That I'm intending to impose forfeiture, but it is
24 the amount in question that will require further briefing and
25 hearing, which will take place on January 14th of next year.

1 **MR. RAMSEY:** That's fine, Your Honor. As long as we
2 preserve our right to make substantive arguments about
3 forfeiture and restitution.

4 **THE COURT:** Yes, yes.

5 **MR. REEVES:** Thank you, Your Honor.

6 **THE COURT:** All right. Let me ask whether your
7 client would like to say anything at this point.

8 **MR. RAMSEY:** Yes, Your Honor. Obviously, he's
9 conveyed things in his written letter to the Court.

10 **THE COURT:** Yes, which I have seen. And I've seen --
11 I've read all the other supporting letters as well.

12 **MR. RAMSEY:** So, given that, he does have a few brief
13 -- brief comments.

14 **THE COURT:** All right.

15 **THE DEFENDANT:** Your Honor, I just wanted to tell you
16 that I hope you accept my sincerest apologies for my conduct
17 on my charges, insider trading and conspiracy. And there is
18 no excuse for my behavior. I realize that I was wrong, and
19 that I have crossed the line. And I admit that I was wrong,
20 and I accept full -- full responsibility for my behavior.

21 I promise the Court that I would never do that. I love
22 this country. It was the only country that has ever given me
23 shelter, given my family shelter as we left Lebanon. I have
24 hurted this country. I will never do that again. Ever.

25 Give me another chance. And, I will not disappoint you.

1 You will never hear my name in this court or any other court,
2 again. As long as I live. I'll give you my word of honor on
3 that.

4 Thank you for listening.

5 **THE COURT:** All right. Thank you, Mr. Kara.

6 Any reason why judgment should not be imposed?

7 **MR. RAMSEY:** No, Your Honor.

8 (Off-the-Record discussion between counsel)

9 **THE COURT:** I do think that in this case, the parties
10 have properly recommended that there be no custodial time.
11 And, I'll explain my analysis.

12 But, I do think that there need to be some element of
13 punishment. And I think that can be satisfied not only with
14 the fact of conviction, but with some period of home
15 detention.

16 And where I will end up is a Level 8, and I'm going to
17 impose six months of home detention followed by three years of
18 supervised release. I don't think it is necessary to do five
19 years. I am convinced that there's not a deterrent need.

20 I'm convinced that Mr. Kara is sincere in seeking the
21 guidance, supervision, and therapy that he needs. And that
22 three years is a long-enough time to test that and make sure
23 that things are on the right track.

24 But let me first go through the guideline calculations. I
25 agree with the guideline calculations contained in the PSR,

1 that given the amount of the gain here and the nature of the
2 offense, that under 2B1.1(B)(1), there is a -- we start with a
3 level 26. Because there has been an attempt to impede the
4 administration of justice in terms of the untruthfulness that
5 was conveyed to the SEC investigators and the other things
6 that are set forth in the PSR, that a two-level increase is
7 warranted under 3C1.1.

8 The adjusted offense level is 28, but with acceptance of
9 responsibility that brings it down to 25. But as we have
10 discussed, given the extraordinary mental-health and emotional
11 conditions that have been well documented here, which does
12 appear to have some causal relationship to the offense
13 committed, notwithstanding what I said earlier in terms of its
14 prolonged nature, its intricate nature.

15 But I do think for the reasons that particularly
16 Mr. Reeves had pointed out, that a departure under 5H1.3 and
17 5K2.0(a)(4) (sic) is warranted, and as recommended by
18 Probation, I think a five-level adjustment is warranted there,
19 bringing the offense level to 20.

20 And, I think, I also agree with the government that
21 there's been extraordinary cooperation on the part of
22 Mr. Kara. And as we will recall, this cooperation required
23 not only the usual kind of testimony, but testimony which was
24 difficult and which was given in trials against friends and
25 relatives. And the fact he had to waive his rights to

1 confidentiality and open up his medical records, very
2 sensitive medical records, to the Court, and to the process in
3 order to allow that cooperation to proceed, I think makes this
4 an extraordinary case of cooperation.

5 And therefore, the government's suggestion of a 12-level
6 decrease under 5K1.1 is granted, bringing this to an offense
7 level 8. And with the criminal history category of I, we are
8 in Zone A, which calls for zero to six months.

9 And I've already stated that considering the 3553(a)
10 factors, for all the reasons stated in the PSR and the papers,
11 including the background, the difficulties, the trauma that
12 Mr. Kara has experienced in his life, and the resulting
13 disorder, that he has -- with which he's been diagnosed, and
14 his physical health conditions which would not be well-suited
15 for any kind of incarceration, balance that against the need
16 for some punishment and the nature of his conduct here,
17 although being a matter of perhaps motivated by a desire to
18 please, was nonetheless one -- a course of conduct that was
19 thought out, that was planned, that took place over a
20 three-year period, and was not just a compulsive act, a single
21 act of compulsion but a very intricate plan and complicated
22 process involving several transactions, many transactions,
23 that a message of punishment and some deterrence needs to be
24 sent.

25 And that's why it is appropriate to impose the conditions

1 of home confinement which I think is the closest thing we can
2 come to incarceration without actually risking his health in
3 actual incarceration in a penitentiary or a jail.

4 So, taking into account the 3553(a) factors, that is the
5 -- where I come out.

6 Therefore, pursuant to the Sentencing Reform Act of 1984,
7 it is the judgment of this Court that Mounir Michael Kara is
8 hereby placed on probation for a term of three years. The
9 term consists of three years on each of Counts 1 and 26, all
10 terms to run concurrently.

11 While on probation, the Defendant shall not commit another
12 federal, state or local crime, shall comply with the standard
13 conditions that have been adopted with this Court, shall
14 refrain from any unlawful use of a controlled substance and
15 submit to a drug test within 15 days of release of probation
16 and two periodic drug tests thereafter and shall comply with
17 the following conditions:

18 One, the Defendant shall participate in assessment for
19 drug and alcohol abuse as directed by the Probation Officer.
20 And participate in any recommended treatment until such time
21 as the Defendant is released from treatment by the Probation
22 Officer. The Defendant is to pay all or part of the costs of
23 this treatment at an amount not to exceed the cost of
24 treatment, as deemed appropriate by the Probation Officer.
25 Payments shall never exceed the total cost of urinalysis and

1 counseling. The actual co-payment schedule shall be
2 determined by the Probation Officer.

3 Two, the Defendant shall participate in a mental-health
4 treatment program as directed by the Probation Officer. The
5 Defendant is to pay part or all of the costs of this treatment
6 in an amount not to exceed the cost of treatment as deemed
7 appropriate by the Probation Officer. Payment shall never
8 exceed the total cost of mental health counseling. The actual
9 co-payment schedule shall be determined by the Probation
10 Officer.

11 Three -- and I know that Defendant objects to this, but I
12 do think it is an appropriate condition -- that the Defendant
13 shall abstain from the use of all alcoholic beverages. That
14 is something if, during the course of probation, Probation
15 believes that that is a condition that can be lifted, I
16 certainly would consider that. But I think at the outset,
17 given the medical conditions and everything else, it is an
18 appropriate condition.

19 Four, the Defendant shall pay any restitution and special
20 assessment that is imposed by this judgment and remains unpaid
21 at the commencement of probation.

22 Five, Defendant shall not open any new lines of credit or
23 incur any new debt without the prior permission of the
24 Probation Officer.

25 Six, the Defendant shall provide the Probation Officer

1 with access to any financial information, including tax
2 returns, and shall authorize the Probation Officer to conduct
3 credit checks and obtain copies of income tax returns.

4 Seven, the Defendant shall participate in a location
5 monitoring program as directed by the Probation Officer for a
6 period of six months. And, be monitored by location
7 monitoring technology at the discretion of the Probation
8 Officer. Location monitoring shall be utilized to verify his
9 compliance with a curfew while on the program. The Defendant
10 is restricted to his residence every day and times directed by
11 the Probation Officer. The Defendant shall pay all or part of
12 the cost of the program based on his ability to pay, as
13 determined by the Probation Officer.

14 Eight the Defendant shall submit his person, residence,
15 office, vehicle, or any property under his control to search.
16 Such a search shall be conducted by a U.S. Probation Officer
17 at a reasonable time and in a reasonable manner, based on
18 reasonable suspicion of contraband or evidence of a violation
19 of a condition of release. Failure to submit to such a search
20 may be grounds for revocation. The Defendant shall warn any
21 residents that the premises may be subject to searches.

22 The ninth condition was also subject of Defendant's
23 objection. And I agree that in this case, unless the
24 government convinces me otherwise, that I think the process of
25 mending fences and rebuilding family is an important part of

1 the rehabilitation process. And the no-contact provision,
2 while I understand may have a prophylactic effect if there was
3 a risk of some recurrence, but I don't see that risk here.
4 And on the other hand, it will impair any chances of any kind
5 of reconciliation. So I'm inclined to not impose Condition
6 No. 9.

7 **MR. REEVES:** We agree, Your Honor.

8 **THE COURT:** All right. Thank you.

9 So, No. 9: The next No. 9 then is: Defendant shall
10 cooperate in the collection of DNA as directed by the
11 Probation Officer.

12 No. 10, the Defendant shall not possess or own any
13 firearms, ammunition or destructive devices or other dangerous
14 weapons.

15 It is further ordered that the Defendant shall pay to the
16 United States a special assessment of \$200 which shall be due
17 immediately. The Court finds the Defendant does not have the
18 ability to pay, and orders the fine waived.

19 It is the intention of this Court, as I stated earlier, to
20 impose a judgment of forfeiture, and possibly restitution, as
21 well. But, as we have discussed, because of the complexities
22 and the possible ways that can be handled, I'm going to defer
23 the setting of any amounts and hearing further argument on the
24 merits of that until our hearing on January --

25 **THE CLERK:** Fourteenth, at 2:30.

1 **THE COURT:** -- 14th, at 2:30. Otherwise, the term of
2 the sentence will be as I just announced.

3 And in terms of the appeal right, I guess that -- is there
4 a waiver of appeal?

5 **MR. REEVES:** Yes, Your Honor.

6 **THE COURT:** So there is no appeal on this. So we
7 will just continue this matter for the forfeiture and
8 restitution matters to the 14th.

9 If you have any additional briefings or cross-briefings
10 you want to give me on that, file it a week in advance.

11 **MR. RAMSEY:** Yes, Your Honor.

12 **THE COURT:** I already have your comments here, but if
13 you have any additional stuff, I'll give you a chance to
14 follow up on that.

15 **MR. RAMSEY:** Your Honor, just one comment with
16 respect to the location monitoring.

17 **THE COURT:** Yeah.

18 **MR. RAMSEY:** I believe the government also agrees
19 with this, that I assume that the Probation -- we would
20 request that the Probation Office be directed to establish a
21 curfew that allows him to work. We were thinking 7:00 a.m. to
22 7:00 p.m.

23 **PROBATION OFFICER:** Your Honor, if I may speak to
24 that?

25 **THE COURT:** Yeah.

1 **PROBATION OFFICER:** If we set a time, we would have
2 to come to court every time to adjust it. So if Mr. Kara had
3 to work until 8:00 p.m. -- our goal is to allow him to work
4 and make all his medical appointments. We specifically
5 selected this language to allow the flexibility for that. We
6 don't intend to make it more constrictive.

7 **MR. RAMSEY:** Okay. That was our concern. We just
8 want to make sure --

9 **THE COURT:** All right. Well, the language that I
10 have read is broad enough to allow that discretion. And I
11 think that's the way to keep it, and I think everybody is on
12 the same page.

13 We want him to work. And yet, you know, there has to be a
14 real curfew.

15 **PROBATION OFFICER:** Correct.

16 **THE COURT:** So, I think we are all on the same page
17 here.

18 **MR. RAMSEY:** And the other issue with that is with
19 respect to travel on probation. Both with respect to work,
20 which sometimes is outside of the district, in the Eastern
21 District, and then also he has family at other places.

22 I would ask that the Probation Office be given the
23 discretion to approve that travel, with sufficient notice,
24 without having to return to the Court every time.

25 **PROBATION OFFICER:** The only time we would have to

1 come to court is for international travel.

2 **THE COURT:** All right. So domestic travel, I'm going
3 to vest, again, Probation with the authority to approve travel
4 outside of the district. But anything outside this country
5 would have to come back to this Court.

6 **MR. RAMSEY:** Thank you, Your Honor.

7 **THE COURT:** All right? All right. Thank you. So,
8 we will see you in January.

9 **MR. REEVES:** Thank you very much, Your Honor.

10 **THE COURT:** Thank you.

11 **MR. LEACH:** Thank you, Your Honor.

12 **THE DEFENDANT:** Thank you, very much.

13 **THE COURT:** Thank you.

14 (Conclusion of Proceedings)
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CERTIFICATE OF REPORTERS

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



/s/ Belle Ball

Wednesday, December 10, 2014

Belle Ball, CSR 8785, CRR, RDR